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IN THE

Supreme Court of the United States

October Term, 1963

No. 377

AMERICAN AIR FILTER COMPANY, INC.,

Petitioner,

vs.

FARR COMPANY,

Respondent.

Brief for Respondent in Opposition to Petition for Writ of Certiorari.

This case comes before this Court on a Petition by American Air Filter Company, Inc., plaintiff below, for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Ninth Circuit holding invalid Rivers Patent No. 2,807,330.

Question Presented.

The single question presented by the Petition is whether or not the court below erred in holding as a matter of law that the Rivers patent is invalid for want of invention.

Statement of the Case.

The present case is an ordinary patent infringement action involving a patent in the crowded field of air filtration. No particular public interest is involved and no conflict of decisions regarding the validity of the

patent exists. Indeed, the United States District Court for the Western District of Kentucky has also held the patent invalid for lack of invention in a recent decision in *American Air Filter Company, Inc. v. Continental Air Filters, Inc.* (Civil Action No. 3534), as yet unreported.

The Rivers patent describes and claims a method and apparatus for filtering solids such as dust from an airstream. As stated in the opinion of the Court of Appeals (318 F. 2d 500 at 501, Pet. p. 30a), the patented filter is a roll type filter, similar in construction and operation to the familiar roll film photographic camera. In the filter, a length of clean, compressible filter media is wound on a roll or spool, is advanced section by section through the airstream and then wound onto a take-up roll for removal. Such filters are admittedly old in the art:

> "There was nothing new in the concept of placing a web of filter media in roll form and feeding this web from its supply roll across the air stream to be filtered, and thereafter, rerolling the dirty web into a roll which could be thrown away." (Finding 39, Pet. p. 18a).

The filtering media described in the patent is also old in the art:

> "Mr. Rivers did not, by his invention, develop any new filter medium, but, instead, merely used the well known expansible-compressible filter media which had long previously been available and which, for many years, had been used in the non-automatic 'unit' type of air filters." (Finding 37, Pet. p. 17a).

Petitioner urged below that the combining of these old elements results in a "new mode of manipulation" of the filtering media. This alleged new mode merely constitutes compressing the media on the supply and take-up rolls and permitting it to expand when in the airstream. It is accomplished simply by tightly winding the media on the rolls, the media, of course, expanding to its normal depth when unconfined in the airstream. Petitioner's witnesses admit that the only result accomplished by so compressing the media is that of saving space [R. 502-504, 298-300, 680, 705]. As to this, the District Court found:

> ". . . . The patentee's invention brings no improved result insofar as the cleaning of the air is concerned because the old filter media which is subjected to the patentee's new mode of manipulative operation does not, thereby, become enhanced in its air cleaning properties." (Finding 49, Pet. pp. 20a-21a).

Argument.

The petitioner appears to urge that the Court of Appeals erred in holding the Rivers patent invalid for want of invention because it applied the standard of invention set forth by this Court in *Great Atl. & Pac. Tea Co. v. Supermarket Equipment Corp.*, 340 U. S. 147, 95 L. Ed. 162. In this, petitioner argues that Title 35 U. S. C. Sec. 103 relaxes such standard. Respondent submits that the patent is clearly invalid as lacking invention without regard to this question.* It

*Respondent contended below and still contends that the patent is invalid on several additional grounds not passed upon by the Court of Appeals. These are anticipation, claim indefiniteness and overclaiming.

represents the improvident granting of a monopoly over tightly winding a known compressible filter media in a known filter not to produce improvement in the filtering operation but merely to save space.

Conclusion.

The opinion of the Court of Appeals for the Ninth Circuit raises no issue required to be reviewed by this Court. This is an ordinary patent infringement action in which the Court of Appeals has held the patent invalid for lack of invention. The patent owner is simply dissatisfied with this holding.

It is respectfully submitted that the Petition should be denied.

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